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FISCAL IMPACT STATEMENT

LS 6886

BILL NUMBER: HB 1176

NOTE PREPARED: Feb 24, 2009

BILL AMENDED: Feb 23, 2009

SUBJECT: Residential Mortgage Lending Practices.

FIRST AUTHOR: Rep. Riecken

FIRST SPONSOR: Sen. Kruse

BILL STATUS: As Passed House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill does the following:

Ability to Repay Loan- The bill prohibits creditors, loan brokers, and certain other persons from recommending or making to, or procuring on behalf of, a borrower a first lien mortgage transaction or a home loan without grounds to believe that, as of the date or the projected date of the closing of the loan, the borrower has the ability repay the first lien mortgage transaction or home loan based on factors that are reasonable to take into account, as determined by the appropriate regulatory authority or the attorney general's homeowner protection unit (unit), as appropriate.

No Charge of Prepayment Fee or Penalty- The bill provides that in the case of a first lien mortgage transaction or a home loan that: (1) is closed after June 30, 2009; and (2) has an interest rate that is subject to change during the term of the loan; the creditor may not contract for and may not charge the debtor or borrower a prepayment fee or penalty.

Inspection of Closing Documents- The bill provides that for a home loan that is closed after December 31, 2009, the closing agent shall, upon the borrower's request, permit the borrower to inspect the closing documents, completed to set forth those items that are known to the closing agent at the time of inspection, with respect to the home loan not later than one business day before the closing (Provides that for purposes of the requirement, "closing documents" mean the HUD-1 or HUD-1A settlement statement.) The bill provides that if: (1) the closing agent does not permit the borrower to inspect the closing documents in the prescribed time or manner; or (2) any items required to be set forth in the closing documents are incomplete at the time of the borrower's inspection; the borrower is entitled to delay or reschedule the closing within three days of the scheduled closing without penalty and without forfeiting the right to enter into the home

loan or into the purchase contract.

Conflicting Terms in Closing Documents- The bill provides that if the terms of the home loan set forth in the closing documents inspected by the borrower differ from the terms of the home loan presented to the borrower at the time of the closing: (1) the Attorney General's (AG) Homeowner Protection Unit (HPU) may investigate the circumstances surrounding the home loan and take certain enforcement actions; and (2) the borrower is entitled to bring an action for certain relief against the creditor if the creditor does not conform the terms of the home loan to the terms set forth in the closing documents inspected by the borrower.

Influencing Appraisals- The bill provides that a person shall not corrupt or improperly influence, or attempt to corrupt or improperly influence, a real estate appraiser or an appraisal. The bill provides that a creditor that issues mortgage loans in Indiana shall, not later than three business days after receiving a written application for a mortgage loan from a borrower, provide to the borrower or a notice, on a form prescribed by the HPU, that includes: (1) contact information for the HPU; and (2) a statement that the borrower may contact the unit to report a suspected violation of the prohibition against corrupting or improperly influencing a real estate appraiser or an appraisal.

Annual Report of MLFPTF- The bill provides that the annual report provided by the Mortgage Lending and Fraud Prevention Task Force (MLFPTF) to the Legislative Council (LC) must include the following information for the most recent state fiscal year: (1) The number of complaints or reports received by the HPU concerning suspected violations of the prohibition against corrupting or improperly influencing a real estate appraiser or an appraisal. (2) A breakdown of the sources of the complaints or reports, based on the complainants' interest in or relationship to the real estate transactions upon which the complaints or reports are based. (3) A description of any disciplinary or enforcement actions taken, or criminal prosecutions pursued, in connection with the complaints or reports received.

Penalties and Enforcement- The bill sets forth certain penalties and enforcement procedures for violations of the provisions concerning real estate appraisals.

Foreclosure Consultant Records- The bill requires a foreclosure consultant to retain all records related to services performed on behalf of a homeowner for at least three years after the termination or conclusion of the foreclosure consultant contract.

Prohibitions- The bill prohibits a person from engaging in, or soliciting to engage in, a real estate or mortgage transaction without a permit or license required by law. The bill prohibits a person from making certain representations with respect to: (1) a mortgage or real estate transaction; or (2) the property that is the subject of the transaction; if the representation is not true and the person knows or reasonably should know that the representation is not true.

Cost of Review Appraisal- The bill provides that a practitioner of a licensed profession who has been subjected to disciplinary sanctions by the board that regulates the profession may be required to pay the costs of any real estate review appraisal obtained in connection with the disciplinary proceedings.

Violation of Statutes by Real Estate Salesperson/Broker- The bill provides that a violation of the statutes concerning: (1) credit service organizations; and (2) mortgage rescue protection fraud; by a person licensed or required to be licensed as a real estate salesperson or broker is a violation of the statute governing the regulation of real estate salespersons and brokers and is subject to certain specified enforcement procedures and sanctions.

Effective Date: Upon passage; July 1, 2008; July 1, 2009.

Explanation of State Expenditures: (Revised) *Ability to Repay Loan*- A person in violation of this provision could face censure or complete revocation of their license or registration from the appropriate authority (Securities Commissioner (SC), the Department of Financial Institutions (DFI), or the HPU whichever is applicable). Additionally, civil penalties could be imposed. A person violating this provision would commit a Class D felony.

Home Loan Practices Act- Additionally, violators of the ability to repay provision would be subject to the penalties under the Home Loan Practices Act. Currently, the penalties include AG action, Class A misdemeanor, and additional civil penalties. By broadening the scope of the Home Loan Practices Act, the HPU could see an increase in civil litigation, which would increase the AG's expenditures.

(Revised) *Inspection of Closing Documents*- The HPU would prescribe the form of instructions for borrowers on the creditor's requirement to produce closing documents before closing to a borrower. The HPU would be able to prescribe the form within their existing level of resources.

No Charge of Prepayment Fee or Penalty- A creditor violating this provision could face disciplinary action from the DFI. The DFI could revoke or suspend a violator's license.

(Revised) *Influencing Appraisals*- A person in violation of this provision would commit a Class A misdemeanor and be subject to AG remedies under deceptive consumer sales law. The HPU would prescribe the form for a borrower regarding appraisals. The HPU would be able to prescribe the form within their existing level of resources.

Conflicting Terms in Closing Documents- This provision could increase the number of investigations conducted by the HPU.

Cost of Review Appraisal- The state could experience a cost savings if the Professional Licensing Agency via the Board of Appraisers could require a licensee to recoup all or some of the complaint investigation costs incurred by the Attorney General (AG). This provision could also increase the workload of a professional licensing board if action had to be taken against more practitioners.

Violation of Statutes by Real Estate Salesperson/Broker & Prohibitions- The Real Estate Commission (REC) could realize an increase in workload if more disciplinary proceedings occur.

Background Information- The AG reverted \$173,490 at the close of FY 2008, \$0 in FY 2007, \$34,631 in FY 2006, and \$46,010 in FY 2005 to the General Fund. The HPU was appropriated \$63,391 from the state General Fund for FY 2009 operation. The AG expended \$250 to \$500 per appraisal complaint investigation and reviewed 130 appraiser cases during 2008.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$69,223. The average length of stay in Department of

Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Inspection of Closing Documents-* A closing agent who does not provide closing documents within one day of closing on a property to a borrower could face a civil penalty of \$25 unless the borrower has waived the right to review the documents. The revenue from this penalty would be placed into the Home Ownership Education Account (HOEA). As of December 24, 2008, the HOEA had collected \$891.50 in fines and penalties. There were no fines or penalties deposited into this account during FY 2008.

Foreclosure Consultant Records- A foreclosure consultant that fails to retain records as required by the bill could be subject to civil penalties for fraudulent acts if brought by the AG to a court of record. The penalty for an incurable deceptive act under IC 24-5-0.5 is \$500.

Ability to Repay Loan- If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase.

No Charge of Prepayment Fee or Penalty- If more licenses are revoked or suspended as a result of this provision, the DFI would see a reduction in renewal fee revenue from creditors that no longer would be allowed to practice in Indiana.

(Revised) *Influencing Appraisals-* Violators of this provision would commit a Class A misdemeanor and be subject to civil penalties of not more than \$10,000 per violation. Civil penalties under this provision would be deposited into the Investigative Fund (IF). If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. A court could order a violator to reimburse the state for the AG's reasonable investigation costs.

Violation of Statutes by Real Estate Salesperson/Broker & Prohibitions- A licensed person or person requiring licensure that violates this provision would commit a Class A infraction.

Background Information- *Civil Action Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Criminal Penalty Revenue: The maximum fine for a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. The maximum judgment for a Class A infraction is \$10,000, which is deposited in the state General Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Ability to Repay Loan- Criminal Penalty Revenue:* If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town

court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Civil Action Fee Revenue: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: AG; Professional licensing boards; Securities Commissioner; DFI.

Local Agencies Affected: Trial courts, city and town courts.

Information Sources: Indiana State Budget Agency: *General and Rainy Day Fund Summaries, June 30, 2008*; Auditor's Data; *State of Indiana List of Appropriations Made by the 2007 Indiana General Assembly for the Biennium July 1, 2007, to June 30, 2009.*

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